

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

TED E. CHRISTENSEN et al.,

Plaintiffs and Appellants,

v.

WILLIAM W. SMITH, JR.,

Defendant and Respondent.

G039923 (consol. w/ G040103)

(Super. Ct. Nos. 07CC19622,
07CC19727)

ORDER MODIFYING OPINION;
NO CHANGE IN JUDGMENT

On the Court's own motion, it is ordered that the opinion filed herein on January 28, 2009, be modified as follows:

1. On page 2, at the end of the first new paragraph, delete the sentence "As we explain below, these contentions are without merit and we therefore affirm the judgment," and substitute the following new sentences: "In the published portion of this opinion, we conclude the terms of the parties' arbitration agreement do not provide for appellate review of legal errors a party later claims the arbitrator made. In the unpublished portion of the opinion, we explain the Christensens' bias contention is without merit. We therefore affirm the judgment."

2. On page 3, in the second sentence of the second new paragraph, change the upper-case "A" in the bracketed word "Arbitrator" to a lower-case "a".

3. On page 4, near the top of the page, delete “Judge Thomas” and substitute “[the arbitrator]”.
4. On page 4, in the second sentence of the first new paragraph, delete “Judge Thomas, Victoria Thomas” and substitute “[the arbitrator], [the arbitrator’s wife]”.
5. On page 4, in the last sentence of the first new paragraph, delete “Judge Thomas” and substitute “[the arbitrator]”.
6. On page 4, in the second sentence of the second new paragraph, delete “ENRON” and substitute “E[nron]”.
7. On page 4, in the penultimate sentence of the second new paragraph, delete “Victoria Thomas” and substitute “[the arbitrator’s wife]”.
8. On page 7, in the third sentence of the first new paragraph, delete “merely provides” and substitute “suggest” and, immediately after that sentence, insert the following new sentences: “Absent extrinsic evidence introduced below, and there was none here, we review the terms of an arbitration agreement de novo. (*Metalclad Corp. v. Ventana Environmental Organization Partnership* (2003) 109 Cal.App.4th 1705, 1716.) Whether the terms of a contract are ambiguous is a question of law. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.) We discern no ambiguity in the agreement.”
9. On page 7, at the beginning of the last sentence of the first new paragraph, change “The language” to “The language here”.
10. On pages 10-11, in the first sentence of the paragraph spanning the two pages, change “Judge Thomas or Victoria Thomas” to “[the arbitrator] or [his wife]”.
11. On page 11, in the penultimate sentence of the last paragraph on that page, change “Christensens’s” to “Christensens”.
12. On page 11, in the last sentence of the last paragraph on that page, change “Christensens’s” to “Christensens” and change the final clause of that sentence from “and the absence of bias cannot be cumulated to somehow produce an impression of bias” to “nor is an impression of bias shown by aggregating a number of unfounded complaints”.

These modifications do not change the judgment.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P.J.

O'LEARY, J.